

ORDINANCE NO. 2002-065

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE ENTITLED THE "PALM BEACH COUNTY LOCAL PREFERENCE IN PURCHASING ORDINANCE"; PROVIDING FOR A TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR A RECIPROCAL PREFERENCE FOR LOCAL BUSINESSES; PROVIDING FOR A STRAIGHT PREFERENCE FOR LOCAL BUSINESSES; PROVIDING FOR INTERLOCAL AGREEMENTS; PROVIDING FOR WAIVER; PROVIDING FOR LIMITATIONS; AUTHORIZING THE COUNTY ADMINISTRATOR OR DESIGNEE TO DEVELOP RULES AND REGULATIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Palm Beach County annually spends significant public funds on goods, services and the construction of public works projects; and

WHEREAS, the dollars expended by Palm Beach County for such procurements are derived in large part from the taxes and fees paid by its local businesses; and

WHEREAS, while Palm Beach County has not established a preference in those procurements for its local businesses, it has learned that many other counties, cities, states and other jurisdictions have enacted preferences for their local businesses; and

WHEREAS, Palm Beach County businesses may have suffered competitive disadvantages in attempting to do business in jurisdictions with local preferences; and

WHEREAS, in the interest of fairness to its local businesses which are generally subject to a higher cost of living and cost of doing business in Palm Beach County, and for the purpose of ameliorating the effects of other jurisdictions' preferences on the County's local businesses, the Board of County Commissioners wishes to enact its own local preference policy; and

WHEREAS, the Board of County Commissioners further believes that such

1 preference will stimulate the economy, attract new businesses and industry; and create
2 demand for jobs to provide such goods, services and construction; and

3 **WHEREAS**, the provisions of this Ordinance shall apply only to funds
4 expended by Palm Beach County to procure goods, services and to construct public
5 improvements, where permitted by law.

6 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF**
7 **COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

8 **Section 1. Title.**

9 The provisions of this Ordinance shall be known and cited as the Palm Beach
10 County Local Preference in Purchasing Ordinance.

11 **Section 2. Definitions.**

12 (a) "Local business" means a bidder or proposer which has a permanent place
13 of business within Palm Beach County and which holds a valid occupational license issued
14 by Palm Beach County that authorizes the bidder or proposer to provide the goods, services,
15 or construction to be purchased and which is issued prior to the issuance of the invitation for
16 bids/request for proposals for which a preference is sought. If the business is a joint
17 venture/partnership, it is sufficient for qualification as a local business if at least one of the
18 joint venturers/partners meets the test set forth in this subsection.

19 (b) "Non-local business" means a bidder or proposer which is not a local
20 business or a regional business as defined herein.

21 (c) "Permanent place of business" means headquarters which are located
22 within Palm Beach County or a permanent office or other site located within Palm Beach
23 County from which a bidder or proposer will produce a substantial portion of the goods or
24 perform a substantial portion of the services to be purchased and which was in existence
25 prior to the issuance of the invitation for bids/request for proposals. A post office box or
26 location at a postal service center shall not constitute a permanent place of business.

27 (d) "Regional business" means a business which does not have a permanent
28 place of business within Palm Beach County and which is domiciled within Broward, Martin,
29 or Miami-Dade County for purposes of receiving a regional business preference from
30 Broward, Martin, or Miami-Dade County.

1 (e) "Regional business preference" means any policy, program, rule,
2 regulation or practice of Broward, Martin or Miami-Dade County which grants any business
3 a preference of any amount or percentage based on its location in that jurisdiction in relation
4 to other bidders or proposers.

5 All other terms and definitions used herein shall have the same meaning as
6 set forth in the Purchasing Ordinance, as it may be amended.

7 **Section 3. Reciprocal Preference for Local Businesses.**

8 In the event the lowest responsive, responsible bidder or the highest ranked
9 responsive, responsible proposer in the procurement of goods, services or the construction
10 of public works projects is a regional business, and the regional business is from a
11 jurisdiction which applies a regional business preference against Palm Beach County
12 businesses, the bids or proposals of all local businesses may be adjusted by five percent
13 (5%), solely for the purpose of determining bid or proposal award . The bid price of local
14 bidders will be adjusted downward by five percent (5%) for purposes of ranking bidders.
15 The proposal scores of local proposers will be adjusted upward by five percent (5%) for
16 purposes of ranking proposers. In no event, however, shall the application of this adjustment
17 change the actual bid or proposal amount.

18 The determination as to whether a bidder or proposer is a local or regional
19 business shall be made by County staff based upon documentation submitted by the local and
20 regional bidder or proposer at the time of bid or proposal submission and pursuant to rules
21 and regulations promulgated by the Purchasing Department. County staff may require a
22 bidder or proposer to provide additional information at any time prior to the award of the
23 contract.

24 **Section 4. Straight Preference for Local Businesses.**

25 In the event the lowest responsive, responsible bidder or the highest ranked
26 responsive, responsible proposer in the procurement of goods, services or the construction
27 of public works projects is a non-local business, the bids or proposals of all responsive,
28 responsible local businesses may be adjusted by five percent (5%), solely for the purpose of
29 determining bid award. The bid price of local bidders will be adjusted downward by five
30 percent (5%) for purposes of ranking bidders. The proposal score of local proposers will be

1 adjusted upward by five percent (5%) for purposes of ranking proposers. In no event,
2 however, shall the application of this adjustment change the actual bid amount.

3 The determination as to whether a bidder or proposer is a local or non-local
4 business shall be made by County staff based upon documentation submitted by the bidder
5 or proposer at the time of bid or proposal submission and pursuant to rules and regulations
6 promulgated by the Purchasing Department. County staff may require a bidder or proposer
7 to provide additional information at any time prior to the award of the contract.

8 **Section 5. Interlocal Agreements.**

9 In the event that Broward, Martin, or Miami-Dade County, respectively,
10 extends any preference given to local businesses within their jurisdiction to Palm Beach
11 County businesses, Palm Beach County may enter into an interlocal agreement with such
12 county extending the preferences established in this Ordinance to businesses located within
13 such counties.

14 **Section 6. Waiver.**

15 The application of this Ordinance to any particular purchase may be waived
16 by the Palm Beach County Board of County Commissioners where such waiver would be in
17 the best interests of the County.

18 **Section 7. Limitations.**

19 (a) The provisions of this Ordinance shall apply only to procurements which
20 are above the formal bid threshold as set forth in the Palm Beach County Code.

21 (b) The provisions of this Ordinance shall not apply where prohibited by
22 federal, state or Florida law or where prohibited under the conditions of any grant.

23 (c) The provisions of this Ordinance shall not apply to any purchase
24 exempted from the provisions of the Palm Beach County Purchasing Ordinance.

25 (d) The provisions of this Ordinance shall in no way limit the right of the
26 Board of County Commissioners to compare the quality of the goods and/or services
27 proposed for purchase and the qualifications, character, responsibility and fitness of any
28 person or entity submitting bids or proposals or to make an award it deems to be in the best
29 interest of the County.

30 (e) In procurements where price is the only factor for selection, the provisions

1 of this Ordinance shall not be applied where its application would result in an award which
2 exceeds the otherwise lowest responsive, responsible bid by \$100,000.00.

3 (f) A local business receiving a preference under the Palm Beach County
4 Minority/Women Business Enterprise Ordinance for a particular purchase shall not be
5 eligible to receive the preferences established in this Ordinance for that same purchase. In
6 case of any conflict between the provisions of this Ordinance and the Minority/Women
7 Business Enterprise Ordinance, the Minority/Women Business Enterprise Ordinance shall
8 take precedence. This subsection shall sunset simultaneously with the sunset of the
9 Minority/Women Business Enterprise Ordinance.

10 (g) The provisions of this Ordinance shall not apply to contracts made under
11 the Consultant's Competitive Negotiation Act (CCNA), Fla. Stat. §287.055, as may be
12 amended from time to time.

13 (h) A local business receiving a preference under the Palm Beach County
14 Small Business Enterprise Ordinance for a particular purchase shall not be eligible to receive
15 the preferences established in this Ordinance for that same purchase. In case of any conflict
16 between the provisions of this Ordinance and the Small Business Enterprise Ordinance, the
17 Small Business Enterprise Ordinance shall take precedence.

18 (i) Decisions concerning the application of this Ordinance shall be made by
19 the Department of Purchasing pursuant to the rules and regulations promulgated by the
20 County Administrator or his/her designee and shall be final as to the County provided such
21 decision may be protested pursuant to the protest process set forth in the Purchasing
22 Ordinance.

23 (j) The provisions of this Ordinance shall not be applied to any procurement
24 where the local nature of a business has been addressed through the scoring criteria.

25 **Section 8. Rules and Regulations.**

26 The County Administrator or his/her designee shall develop and promulgate
27 rules and regulations which shall govern the application and administration of this
28 Ordinance.

29 **Section 9. Repeal of Laws in Conflict.**

30 All local laws and ordinances in conflict with any provisions of this

Ordinance are hereby repealed to the extent of such conflict.

Section 10. Severability.

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 11. Inclusion in the Code of Laws and Ordinances.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

Section 12. Effective Date.

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the 10 day of September, 2002.

DOROTHY H. WILKEN, CLERK

**PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS**

By: Linda C. Neuman

Deputy Clerk

By: Warren H. Newell

Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: [Signature]

County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 13 day of September, 2002.

H:\WPDATA\PURCH\Local Preference 2002-clean-8-8-02.wpd

STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on September 10, 2002.
DATED at West Palm Beach, FL on 10/10/02.
DOROTHY H. WILKEN, Clerk
By: W. H. Brown D.C.